be granted to the company, of which the defendants were directors, were very clear. Now the second and fourth defendants sought to renege on their commitment as the company's project had turned sour and the company was being wound up. They should not be allowed to do that.

Order accordingly.

Solicitors: *Khattar Wong & Partners*; *Shook Lin & Bok*; *Jing Quee Chin Joo & Teck Hui.*

Reported by *Ng Sheau Jiuan*

Re Siah Mooi Guat

HIGH COURT (SINGAPORE) – ORIGINATING MOTION NO 60 OF 1986
SINNATHURAY J
12 SEPTEMBER 1988

Administrative Law – Judicial review – Applicant declared undesirable immigrant – Unlawful presence in Singapore – Cancellation of re-entry permit and employment pass – Application for order of certiorari to quash decisions of Minister and Controller – Grounds of decision not disclosed to preserve confidentiality of source of information – Principles governing administration of immigration laws – Rules of natural justice – Whether applicable – Legitimate expectation – Whether decision of Minister irrational – Wednesbury unreasonableness – Whether Minister bound to adduce evidence that disclosure would harm public interest – Immigration Act (Cap 133, 1985 Ed), ss 8(3)(k) & 14

This is an application by Siah Mooi Guat ('the applicant') for an order of certiorari to remove into the High Court and quash: (a) the decision of the Minister of Home Affairs made pursuant to s 8(3)(k) of the Immigration Act on 5 September 1986, declaring the applicant to be an undesirable immigrant; (b) the declaration and cancellation made by the Controller of Immigration on 5 September 1986 whereby the Controller (i) under s 14(4) of the Immigration Act, declared the applicant's presence in Singapore unlawful, (ii) under s 14(3) of the Immigration Act, cancelled the applicant's re-entry permit dated 6 March 1984, and (iii) under reg 16 of the Immigration Regulations 1972, cancelled the applicant's employment pass issued on 6 March 1984; and (c) the decision of the Minister of Home Affairs on 16 September 1986 made under s 14(5) of the Immigration Act whereby he dismissed the applicant's appeal against the declaration and cancellation made by the Controller.

Broadly, the grounds for the applicant were that the Minister for Home Affairs ('the Minister') and the Controller of Immigration ('the Controller') had breached the rules of natural justice; that the applicant had a legitimate expectation to continue to reside in Singapore at least until the expiry of her permit; and that the Minister's decisions were so unreasonable that it was open to review by the courts under the Wednesbury principles.

The applicant, a Malaysian citizen with a Malaysian passport, first came to Singapore in 1973. In April 1974, she was granted a temporary employment pass and, on 14 June 1974, an employment pass for one year, renewable yearly. On 2 September 1975, the applicant was granted an entry permit which required her continued employment with the Singapore Sports Council for a period of six years. On or about 21 October 1976, she returned her entry permit as she had resigned from the Sports Council. The applicant subsequently gained employment with Times Publishing Bhd. Again, she applied and obtained a temporary employment pass which permitted her to remain in Singapore. On 30 November 1977, she was issued with an employment pass valid for one year, renewable from time to time until 30 November 1980. On 19 November 1979, the applicant applied for 'permanent residence' and was issued an entry permit no 32188 with effect from 8 April 1980, subject to the condition that she serve Times Publishing Bhd for a period of three years from the date of the issue of the permit. On 9 March 1984, the applicant applied for a renewal of her re-entry permit and was issued with the same valid till 6 March 1987. She was also issued with an employment pass for a period of three years expiring on 6 March 1987. The applicant left the service of Times Publishing Bhd in May 1984. On 24 October 1984, her solicitors inquired of the Controller whether she had to notify the Immigration Department of any change of her employer, and was informed that it was not necessary for her to do so. By then the applicant was employed as an Associate of Russell Reynolds Inc. She also owned an apartment in Singapore. In September 1985, she was informed by way of a routine letter by the Professionals Information and Placement Service that she was eligible to apply for Singapore citizenship. The applicant, however, did not respond to it. On 5 September 1986, without any prior warning, the applicant received a letter from the Controller informing her, inter alia, that her presence in Singapore had been declared unlawful and her re-entry permit had been cancelled. The appellant appealed against the decision but this was rejected by the Minister who required her to leave Singapore by 22 September 1986.

Held, dismissing the application:

(1) In the instant case no promise whatsoever was made to the applicant that her stay in Singapore was to be conditioned by any considerations other than those provided in the Immigration Act and the Regulations thereunder. Therefore, no question of any legitimate expectation arises in the applicant's favour.

(2) Parliament has provided in the Immigration Act for appeals by aggrieved persons against the decisions of the Controller and the Minister. The substance of these provisions is that the right to be heard, a procedural safeguard afforded by the rules of natural justice, has been given statutory recognition and protection in the Act. The applicant who was declared a prohibited immigrant and whose re-entry permit was cancelled by the Controller had a right of appeal to the Minister. The applicant had by letter availed herself of that right. The Minister had carefully considered her appeal and had rejected it. Neither in common law nor under the Act was the Minister required to give reasons for his decision.

(3) The rules of natural justice do not apply to aliens in the administration of the immigration laws in Singapore. For these rules to apply to aliens, there has to be specific legislation. There is no such legislation in Singapore.

(4) Having regard to the provision in s 8(3)(k) of the Act that the Minister may receive information about an alien from 'any source deemed by the Minister to be reliable, or from any government through official or diplomatic channels', the sources of the information and the nature of the information received by the Minister could be of a highly confidential

nature. It is for the Minister, and not the court, to decide whether it is in the public interest that the information should be disclosed.

(5) Whatever the ground relied on by the applicant may be, the burden is on the applicant to make out her case against the Minister. The learned judge found as a fact that the two factual bases, ie the applicant believed she had been a law-abiding resident in Singapore and that she received letters informing her that she was eligible to apply for Singapore citizenship, do not and cannot support her application.

(6) The evidence for the Minister that he gave due and careful consideration to her appeal before he rejected it was accepted. Since the Minister, who is responsible to Parliament, had given the applicant's case his personal consideration, and there was no evidence to show that he had acted unfairly, the application for an order of certiorari to quash the decision of the Minister and the Controller must be dismissed with costs.

Cases referred to

1 *Attorney General of Hong Kong* v *Ng Yuen Shiu* [1983] 2 AC 629 (distd)
2 *Berthelsen* v *Director General of Immigration, Malaysia & Ors* [1987] 1 MLJ 134 (not folld)
3 *CCSU* v *Minister for the Civil Service* [1985] AC 374 (refd)
4 *Schmidt & Anor* v *Secretary of State for Home Affairs* [1969] 2 Ch 149 (refd)

Legislation referred to

Evidence Act (Cap 97, 1985 Ed) ss 125, 126
Immigration Act (Cap 133, 1985 Ed) ss 8(3)(k), 10, 11, 14, 15
Immigration Regulations 1972 reg 16
Rules of the Supreme Court 1970 O 53 r 1(2)
Administrative Decisions (Judicial Review) Act 1977 [Aust] ss 5, 13
Immigration Act 1951 [Mal]
Aliens Act [UK]
Immigration Act 1971 [UK]

Louis Blom-Cooper QC (*Vinod Kumar Dube* with him) for the applicant.

Fong Kwok Jen, Deputy Senior State Counsel (*Ng Yuen*, State Counsel, with him) for the respondents.

Cur Adv Vult

Sinnathuray J: This is an application by Siah Mooi Guat ('the applicant') for an order of certiorari to remove into the High Court and quash:

(a) the decision of the Minister of Home Affairs made pursuant to s 8(3)(k) of the Immigration Act on 5 September 1986, declaring the applicant to be an undesirable immigrant;
(b) the declaration and cancellation made by the Controller of Immigration on 5 September 1986 whereby the Controller (i) under s 14(4) of the Immigration Act, declared the applicant's presence in Singapore unlawful, (ii) under s 14(3) of the Immigration Act, cancelled the applicant's re-entry permit dated 6 March 1984, and (iii) under reg 16 of the Immigration Regulations 1972, cancelled the applicant's employment pass issued on 6 March 1984; and
(c) the decision of the Minister of Home Affairs on 16 September 1986 made under s 14(5) of the Immigration Act whereby he dismissed the applicant's appeal against the declaration and cancellation made by the Controller.

The applicant raised ten grounds on which she sought relief in the statement filed pursuant to O 53 r 1(2) of the Rules of the Supreme Court 1970, but as her counsel, Mr Blom-Cooper QC, did not take each of them separately at the hearing, it is not necessary to set them out here. Broadly, the grounds were that the Minister for Home Affairs ('the Minister') and the Controller of Immigration ('the Controller') had breached the rules of natural justice; that the applicant had a legitimate expectation to continue to reside in Singapore at least until the expiry of her permit; and that the Minister's decisions were so unreasonable that it was open to review by the courts under the Wednesbury principles.

The facts on which arguments were raised at the hearing are these. The applicant, a Malaysian citizen, and holder of a Malaysian passport, first came to Singapore in 1973. Her stay in Singapore was therefore subject to immigration control. In April 1974, she was granted a temporary employment pass and, on 14 June 1974, an employment pass for one year, renewable yearly, subject to the validity of her passport. On 2 September 1975, the applicant was granted an entry permit which required her continued employment with the Singapore Sports Council for a period of six years. On or about 21 October 1976, she returned her entry permit as she had resigned from the Sports Council.

The applicant subsequently gained employment with Times Publishing Bhd. Again, she applied and obtained a temporary employment pass which permitted her to remain in Singapore. On 30 November 1977, she was issued with an employment pass valid for one year. This pass was renewed from time to time until 30 November 1980.

On 19 November 1979, the applicant applied for 'permanent residence'. It was explained in an affidavit for the Controller that 'permanent residence' is a nomenclature referring to those persons issued with entry permits pursuant to s 10 of the Immigration Act (Cap 133, 1985 Ed) ('the Act'). Such persons are permitted to remain in Singapore without any restriction as to their period of residence, subject, however, to ss 11, 14 and 15 of the Act, the first section of which deals with the grant of re-entry permits, the second concerns cancellation and declaration regarding permits, and the third makes it unlawful to enter or remain in Singapore after cancellation or declaration. The applicant was issued an entry permit no 32188 with effect from 8 April 1980, subject to the condition that she served Times Publishing Bhd for a

period of three years from the date of the issue of the permit.

On 9 March 1984, through her then solicitors, Lee & Lim, the applicant applied for a renewal of her re-entry permit which was to expire on 17 March 1984. I should explain here that a person residing in Singapore pursuant to an entry permit issued under s 10 of the Act who seeks to leave Singapore temporarily must apply for a re-enty permit under s 11 of the Act, which will allow his re-entry into Singapore. With their letter to the Controller, the solicitors sent a letter of confirmation of employment of the applicant by Times Publishing Bhd. By a letter dated 28 April 1984, the solicitors were informed that the applicant has been issued with a re-entry permit valid till 6 March 1987. She was also issued with an employment pass for a period of three years expiring on the same day, 6 March 1987.

The applicant, however, left the service of Times Publishing Bhd in May 1984. On 24 October 1984, her solicitors inquired of the Controller whether she had to notify the Immigration Department of any change of her employer. Having sought information from Times Publishing Bhd that there had been no break in service of the applicant with the company between 8 April 1980 and 8 April 1983, on 12 November 1984, the Department wrote to the applicant's solicitors that it was not necessary for her to notify the Department of her change of employer.

By then the applicant was employed as an associate of Russell Reynolds Inc. She also owned an apartment in which she had purchased in May 1979. In September 1985, she was informed by way of a routine letter by the Professionals Information and Placement Service, a division of the Ministry of Finance, that as she had been a permanent resident of Singapore for more than five years she was eligible to apply for Singapore citizenship. On 30 January 1986, an officer in the Singapore Citizenship Registry wrote to the applicant inviting her to call at the Registry to determine her 'eligibility to apply for Singapore citizenship'. The applicant, however, did not respond to this letter.

According to the applicant, nothing untowards happened to her, as regards her residence in Singapore, until 5 September 1986, when suddenly, without any prior warning, she received the following letter from the Controller:

ENT/100837/79
5 September 1986

Miss Siah Mooi Guat *alias* Mei Siah
31, Tomlinson Road, #11-35
Beverly Mai
Singapore 1024

Dear Madam,
Your presence in Singapore has been declared unlawful and your re-entry permit and employment pass have been cancelled on the ground that you are a prohibited immigrant under para (k) of sub-s (3) of s 8 of the Immigration Act (Cap 81, 1970 Ed). A copy each of the declaration and cancellation notices are attached for your retention.

You may, if you so wish, appeal against the declaration and cancellation of your re-entry permit by petition in writing to the Minister for Home Affairs, Singapore, through the Controller of Immigration, within seven days of the date of receipt of this letter.

Yours faithfully
Sgd
Lim Ek Hong
Controller of Immigration
Singapore

Her then solicitors, Chu Chan Gan & Ooi, by a letter dated 11 September 1986, lodged an appeal to the Minister. The letter reads as follows:

GCB/bt
11 September 1986
The Honourable the Minister of Home Affairs, through the Controller of Immigration.

Dear Sir,

Re: Miss Siah Mooi Guat *alias* Mei Siah

We act for Ms Siah Mooi Guat.

We are instructed to refer to the letter of Controller of Immigration dated 5 September 1986 together with its enclosures.

We are instructed by our client to appeal to you on her behalf to reconsider the declaration made against our client under s 14(4) of the Immigration Act and to discover what is the reason or reasons that led to this action.

Our client has worked and lived in Singapore since 1973. She is a person of independent means and has bought her own home in Singapore.

To her knowledge, she has not been engaged in any activity, that is, inimical to the interests of Singapore. Indeed as late as September 1985, she was invited to apply for Singapore citizenship under the accelerated citizenship (AC) scheme of the government.

For many years our client was a senior executive in the Times Organization. She was largely responsible for the Group's diversification of its publishing interests into Hong Kong, Thailand and Australia. Her capabilities were recognized by the top management of the Times Group and at a very early stage, she was given very responsible management tasks in the group. There is no doubt that she is a person of exceptional talent.

She is now about to embark on a new career by going abroad to work in a US investment bank in the field of funds management.

To be declared as an undesirable immigrant would damage her career and future. We would therefore urge you to reconsider this matter in the light of the evidence available to you regarding her status and also having regard to the fact that in any event she would be going away to work abroad.

We would urge that consideration be given to her previous contribution to the corporate expertise of the Times Group

and to the publishing industry of Singapore, and that having regard to such contribution, she should be spared the stigma of an undesirable immigrant.

We also enclose our client's two re-entry permits and green disembarkation card.

Yours faithfully
Sgd

Within a week, the applicant's solicitors were informed by letter that the Minister had rejected the appeal. That letter reads as follows:

MHA (ID) 1/9/06
16 September 1986
M/s Chu Chan Gan & Ooi
Advocates & Solicitors
93 Market Street
CYS Building #09-00
Singapore 0104

Dear Sirs
Appeal Against Declaration Under Section 14(4) of The Immigration Act 1970
Miss Siah Mooi Guat *alias* Mei Siah

I refer to your letter to the Minister for Home Affairs through the Controller of Immigration on 11 September 86.

2 The Minister has considered your appeal and decided that the decision should stand. Miss Siah Mooi Guat is required to leave Singapore on or by 22 September 86.

Yours faithfully
Sgd
Koh Geok Eng (Miss)
for Permanent Secretary
(Home Affairs)

For the purpose of these proceedings, Mr Lim Siam Kim, a deputy secretary who, in September 1986, when the appeal was before the Minister, was covering the duties of the Permanent Secretary has filed two affidavits. In paras (3) and (4) of the first affidavit of four paragraphs, he states as follows:

(3) ... The Ministry of Home Affairs received the applicant's appeal to the Minister through the Controller of Immigration. When we received the appeal I submitted the appeal together with all relevant documents to the Minister for his consideration. The Minister gave due and careful consideration to the appeal by the appellant before deciding that the decision taken earlier deeming her to be an undesirable immigrant and the Controller's declaration that her presence in Singapore is unlawful should stand.

(4) The powers given to the Minister under s 8(3)(k) of the Immigration Act (Cap 81, 1970) are exercised carefully and very sparingly. Since 1982 to date, a period of four years and nine months, no more than a dozen non-citizen residents have been deemed by the Minister to be undesirable immigrants.

In the shorter second affidavit, he explained that at the material time, he was covering the duties of the Permanent Secretary who was on leave and said:

(3) The Minister in his consideration under s 8(3)(k) of the Immigration Act (Cap 81, 1970 Ed) considered the information, from a reliable source about the applicant's conduct and activities. The information if disclosed would endanger the confidentiality of the source and that would not be in the public interest.

For ease of reference, I reproduce below the relevant provisions of ss 8 and 14 of the Act:

8(1) Any person who, in the opinion of the Controller, is a member of any of the prohibited classes as defined in subsection (3) and is not a citizen of Singapore is a prohibited immigrant.

(3) The following persons are members of the prohibited classes:

(k) any person who, in consequence of information received from any source deemed by the Minister to be reliable, or from any government through official or diplomatic channels, is considered by the Minister to be an undesirable immigrant;

14(3) Where at any time, during the period of validity of any permit or certificate, the Controller is satisfied that the holder of the permit or certificate is a prohibited immigrant, the Controller shall cancel the permit or certificate.

(4) Where any person has entered Singapore by virtue of a permit or certificate, and the Controller is satisfied —

(b) that the person is a prohibited immigrant;

the Controller may declare at any time after the date of the entry, that the presence of that person in Singapore is unlawful.

(5) On making any cancellation under subsection ... (3) or on making any declaration under subsection (4) the Controller shall, by notification, which, if the address of the person is known, shall be sent to him at that address and otherwise shall be published in such manner as the Controller thinks fit, inform the person affected thereby of the grounds on which the cancellation or declaration has been made and that person may appeal against the cancellation or declaration, as the case may be, within such time and in such manner as may be prescribed, to the Minister, whose decision shall be final.

The main argument for the applicant was that these facts attracted the application of the principle of legitimate expectation. Mr Blom-Cooper said that as on 5 September 1986, the applicant was lawfully resident in Singapore on a re-entry permit which was valid till 6 March 1987, the applicant had a legitimate expectation that she would be allowed to stay in Singapore until the expiry of the re-entry permit. Another submission was that as the applicant was a permanent resident of more than five years' standing and was therefore potentially eligible to apply for Singapore citizenship, she had a further legitimate expectation to stay in this country. However, at the close of the hearings on 7 April 1987, Mr Blom-Cooper conceded that since the applicant's permit to stay in Singapore had come to an end, she no longer had any legitimate expectation to remain in the country. That being the correct position in law, no further consideration is required on this second argument on legitimate expectation.

According to counsel, the legitimate expectation had by the applicant gave her at least two separate procedural

rights. One was an opportunity to afford to the applicant the right to make representations, either orally or in writing, to the Minister before he considered her case under s 8(3)(k) of the Act; and the other was that it imposed a duty on the Minister to give reasons for the two decisions made by him, in deeming the applicant to be an undesirable immigrant. Counsel said that it would follow that if the decision of the Minister was rendered invalid, then the declaration by the Controller on 5 September 1986 that the presence of the applicant in Singapore was unlawful and the two cancellations made by him, of the re-entry permit and the employment pass, would likewise be invalid and of no effect.

By way of summary, the submission for the applicant was that, because the principle of legitimate expectation applied to the facts of her case, and there was no claim by the Minister that his decisions of 5 and 16 September 1986 involved matters of national security, the Minister was bound to comply with the rules of natural justice in toto.

In support of this submission, counsel relied on the Privy Council decision in *Attorney General of Hong Kong* v *Ng Yuen Shiu*[1] and more emphatically on the decision of the Supreme Court of Malaysia in *Berthelsen* v *Director-General of Immigration, Malaysia & Ors.*[2] He urged upon me that as the immigration laws of Malaysia and Singapore were identical in kind, I should have no difficulty in accepting *Berthelsen's* case. This optimism on the part of Mr Blom-Cooper was not shared by Mr Fong Kwok Jen for the respondents who joined issue with him on the submission made by him on both the cases. I therefore have to deal with the two cases at some length.

Ng Yuen Shiu's case[1] is not a difficult one to understand. The applicant, born in China in May 1951, and taken to Macau by his parents at the age of three, entered Hong Kong illegally from Macau in 1967. In 1976, when he applied for an identity card, he was detained and removed to Macau; but within a month he re-entered Hong Kong illegally and remained there. By 1980 he was a part owner of a small garment factory in Hong Kong.

In October 1980, the Hong Kong government announced a change in the immigration policy. It explained that all illegal immigrants from China would be liable to be repatriated. This caused anxiety to the illegal immigrants of Chinese origin who had entered Hong Kong from Macau. They sent a petition to the governor. A senior immigration officer was instructed to respond and he made an announcement outside the Government House. Among other things, he said, 'Those illegal immigrants from Macau will be treated in accordance with procedures for illegal immigrants from anywhere other than China. They will be interviewed in due course ... Each case will be treated on its merits.' Lord Fraser of Tullybelton, who delivered the judgment of the Privy Council, said of this statement, 'The promise that each case would be treated on its merits is at the root of the applicant's argument before the Board.'

The question in the appeal was formulated as: Whether an alien, who had entered Hong Kong without permission and contrary to the laws of the colony, has a right to a hearing by the Hong Kong authorities, conducted in accordance with the rules of natural justice, either in every case or in the particular circumstances of the case.

Having regard to their decision, on the particular circumstances of the case, Lord Fraser said:

> ... it is unnecessary for them to decide the general question. They will therefore assume, without deciding, that the Court of Appeal rightly decided that there was no general right in an alien to have a hearing in accordance with the rules of natural justice before a removal order is made against him.

The learned Law Lord observed that 'this is a very narrow case on its facts' and 'the government's promise to the applicant has not been implemented'. He enunciated the proposition that 'when a public authority has promised to follow a certain procedure, it is in the interest of good administration that it should act fairly and should implement its promise, so long as implementation does not interfere with its statutory duty'. He then applied the proposition to the facts of the case. In dismissing the appeal brought by the Attorney General, he said:

> In the opinion of their Lordships the principle that a public authority is bound by its undertakings as to the procedure it will follow, provided they do not conflict with its duty, is applicable to the undertaking given by the government of Hong Kong to the applicant, along with other illegal immigrants from Macau, in the announcement outside the Government House on 28 October, that each case would be considered on its merits. The only ground on which it was argued before the Board that the undertaking had not been implemented was that the applicant had not been given an opportunity to put his case for an exercise of discretion, which the director undoubtedly possesses, in his favour before a decision was reached. The basis of the applicant's complaint is that, when he was interviewed by an official of the Immigration Department who recommended to the director that a removal order against him should be made, he was not able to explain the humanitarian grounds for the discretion to be exercised in his favour. In particular he had no opportunity of explaining that he was not an employee but a partner in a business which employed several workers.

This concept of legitimate expectation was considered more recently in the House of Lords in *CCSU* v *Minister for Civil Service*[3] ('the *GCHQ* case'). Again, Lord Fraser made clear that, in the field of public law, more familiar to us as administrative law, legitimate expectation arises 'either from an express promise given on behalf of a public authority or from the existence of a regular practice which the claimant can reasonably expect to continue'. He explained the matter thus:

But even where a person claiming some benefit or privilege has no legal right to it, as a matter of private law, he may have a legitimate expectation of receiving the benefit or privilege, and, if so, the courts will protect his expectation by judicial review as a matter of public law. This subject has been fully explained by my noble and learned friend, Lord Diplock, in *O'Reilly* v *Mackman* [1983] 2 AC 237 and I need not repeat what he has so recently said. Legitimate, or reasonable, expectation may arise either from an express promise given on behalf of a public authority or from the existence of a regular practice which the claimant can reasonably expect to continue. Examples of the former type of expectation are *R* v *Liverpool Corporation, ex p Liverpool Taxi Fleet Operators' Association* [1972] 2 QB 299 and *Attorney General of Hong Kong* v *Ng Yuen Shiu* [1983] 2 AC 629 (I agree with Lord Diplock's view, expressed in the speech in this appeal, that 'legitimate' is to be preferred to 'reasonable' in this context. I was responsible for using the word 'reasonable' for the reason explained in *Ng Yuen Shiu*, but it was intended only to be exegetical of 'legitimate'). An example of the latter is *R* v *Board of Visitors of Hull Prison, ex p St Germain* [1979] QB 425 approved by this House in *O'Reilly*, at p 274D. The submission on behalf of the appellants is that the present case is of the latter type. The test of that is whether the practice of prior consultation of the staff on significant changes in their conditions of service was so well established by 1983 that it would be unfair or inconsistent with good administration for the government to depart from the practice in this case. Legitimate expectations such as are now under consideration will always relate to a benefit or privilege to which the claimant has no right in private law, and it may even be to one which conflicts with his private law rights. In the present case the evidence shows that, ever since *GCHQ* began in 1947, prior consultation has been the invariable rule when conditions of service were to be significantly altered. Accordingly, in my opinion if there had been no question of national security involved, the appellants would have had a legitimate expectation that the minister would consult them before issuing the instruction of 22 Dec 1983.

It is also useful that I refer to what Lord Roskill said in this case on the same subject:

The introduction of the phrase 'reasonable expectation' into this branch of our administrative law appears to owe its origin to Lord Denning MR in *Schmidt* v *Secretary of State for Home Affairs* [1969] 2 Ch 149, 170 (when he used the phrase 'legitimate expectation'). Its judicial evolution is traced in the opinion of the Judicial Committee delivered by my noble and learned friend, Lord Fraser of Tullybelton, in *Attorney General of Hong Kong* v *Ng Yuen Shiu* [1983] 2 AC 629, 636-638. Though the two phrases can, I think, now safely be treated as synonymous for the reasons there given by my noble and learned friend, I prefer the use of the adjective 'legitimate' in this context and use it in this speech even though in argument it was the adjective 'reasonable' which was generally used. The principle may now be said to be firmly entrenched in this branch of the law. As the cases show, the principle is closely connected with 'a right to be heard'. Such an expectation may take many forms. One may be an expectation of prior consultation. Another may be an expectation of being allowed time to make representations especially where the aggrieved party is seeking to persuade an authority to depart from a lawfully established policy adopted in connection with the exercise of a particular power because of some suggested exceptional reasons justifying such a departure.

So much then on the subject of legitimate expectation, a principle applicable in public law, which is being developed in England as part of their common law, on a case by case basis, by way of judicial review under the English O 53. I now revert to *Ng Yuen Shiu's* case.[1] It is clear to me that it did not alter the general law relating to immigration control of aliens. If not for the public promise made by the Hong Kong government, beyond the statutory duty imposed on it under the immigration laws that it would decide the case of each of the illegal immigrants from Macau on individual merits, Ng Yuen Shiu would have lost his case in the Privy Council.

I turn now to *Berthelsen's* case[2], on which, I think it is right to say, the submission for the applicant was anchored. This case has troubled me greatly. Here the appellant, a citizen of USA, was granted an employment pass on 2 November 1984 for a period of two years, valid until 2 November 1986, for employment as a staff correspondent of the Asian Wall Street Journal in Kuala Lumpur. However, on 26 September 1986, about five weeks before the pass was due to expire, he was served with a notice of cancellation forthwith. Three grounds were recited in the notice of cancellation, including that the appellant had failed to comply with the conditions imposed in respect of the pass or the instructions endorsed thereon, and that his presence in the federation was or would be prejudicial to the security of the country. Upon the dismissal of the appellant's application to the High Court for leave to apply for orders of certiorari and prohibition, he appealed to the Supreme Court. The court held that as the appellant had not been afforded an opportunity to be heard before the cancellation of his employment pass, certiorari would issue to quash the cancellation. Mr Justice Abdoolcader SCJ, who delivered the judgment of the court, said :

The appellant was lawfully in the country under the sanction of an employment pass validly issued for a stipulated period, and he clearly had a legitimate expectation to be entitled to remain in this country at least until the expiry of the prescribed duration, and any action to curtail that expectation would in law attract the application of the rules of natural justice requiring that he be given an opportunity of making whatever representations he thought necessary in the circumstances.

I have already said that our Immigration Act is the same as the Malaysian Immigration Act 1951, but Mr Fong Kwok Jen for the respondents has raised several grounds in his written submission as to why I should not follow the decision in *Berthelsen's* case.[2] To begin with, he said that it was unfortunate that the learned judges in the Supreme Court did not have the benefit of full arguments presented for the respondents in that case. This is a fair comment, for in the judgment, after stating the facts, the court said:

At the outset of the hearing of the appeal before us we were of the view ex facie that leave should in fact have been

granted in the court below as the point taken by the appellant was not frivolous to merit refusal of leave in limine and justified argument on a substantive motion for certiorari. We accordingly ... allowed the appeal, and granted leave to the appellant to apply for an order of certiorari. We then turned to a consideration of the substantive motion for certiorari on an undertaking by counsel for the appellant to formally file this in the registry.

We asked Mr Selventhiranathan, senior federal counsel appearing for the respondents, to address us in the first instance on one point only, scilicet, whether the appellant should have been afforded an opportunity to be heard before the cancellation of his employment pass. He was unable to give any effective answer to this question.

Next, Mr Fong Kwok Jen submitted that in *Berthelsen's* case,[2] no argument appears to have been raised as to whether it was proper for the court to infer that the rules of natural justice may properly be applied to the provisions of the Malaysian Immigration Act. He said that it would appear that the learned judges had assumed that the rules of natural justice were applicable to those provisions relating to the removal of aliens from the country. He, however, has given no less than five reasons as to why the rules of natural justice do not apply to our Immigration Act. On the subject of legitimate expectation, the submission was that the learned judges had assumed that legitimate expectation, which is now part of the common law of England, would also form part of the common law of Malaysia.

For myself, I leave these submissions without expressing any views on them because I can decide on *Berthelsen's* case[2] on another ground which has also been identified by counsel for the respondents. It is this. Though the learned judges in *Berthelsen's* case[2] did not say so in so many words, it is clear enough to me, from the passage in the judgment I have quoted earlier, that they had founded their decision on *Ng Yuen Shiu's*[1] case. But I am of the view that *Ng Yuen Shiu's* case[1] is of no assistance to me. The vital difference between that case and the present case is that whereas in *Ng Yuen Shiu's*[1] case there had been an express promise made to him, no promise whatsoever was made to the applicant that her stay in Singapore was to be conditioned by any considerations other than those provided in the Immigration Act and the regulations thereunder. Therefore, no question of any legitimate expectation arises in the applicant's favour as had been made available to Ng Yuen Shiu. In as much as I take a different view from that of the learned judges in *Berthelsen's* case[2] of *Ng Yuen Shiu's* case,[1] I cannot accede to Mr Blom-Cooper's request that I decide this case on *Berthelsen's* case.[2]

What then are the principles that govern the administration of our immigration laws? It is not in dispute in this case that the scheme of our immigration legislation is not dissimilar to the English Aliens Acts and the Orders made thereunder. When these immigration laws were in force in England, it was finally settled by the Court of Appeal in *Schmidt & Anor* v *Secretary of State for Home Affairs*[4] that (1) an alien has no right to enter the country except by leave and the Home Secretary can refuse leave without giving any reason; (2) an alien, given leave to enter the country for a limited period, has no right to stay, and no legitimate expectation of being allowed to stay, for a day longer than the permitted period; and (3) the rules of natural justice do not apply and the extension of stay of an alien can be refused without reasons and without a hearing.

However, in *Schmidt's* case,[4] Lord Denning in his judgment said obiter that where the permit to stay of an alien 'is revoked before the time limit expires, he ought, I think, to be given the opportunity of making representations: for he would have a legitimate expectation of being allowed to stay for a permitted time'. Thus, Mr Blom-Cooper submitted that an alien who is in possession of an entry permit which has not yet expired is in the country lawfully until the date of expiry and, therefore, he has an interest during the unexpired portion that carries with it a public law right to a fair procedure, if and when the Minister desires to terminate that leave to stay prematurely.

This argument for the applicant based on *Schmidt's* case[4] is an attractive one. I accept the factual premise that the applicant who had a permit valid till 6 March 1987 was lawfully in the country and could, in the normal course of events, remain in the country until the date of expiry of the permit. But the legal consequence of a public law right or interest claimed for the applicant, for the unexpired portion of her stay in Singapore, has not been supported by any English authority. Even the Privy Council, when it had the opportunity, in *Ng Yuen Shiu's* case[1] did not approve the obiter of Lord Denning in *Schmidt's* case.[4] It merely noted that the phrase 'legitimate expectation' originated in the judgment of Lord Denning in that case. In any event, Lord Denning did not explain in his obiter when the opportunity to make representations ought to be given to an alien. He noted that in practice the Home Secretary did consider representations, though it is not clear from the judgment whether the representations are made to the Home Secretary before or, for review, after he has made the order. He also observed that there was a Command Paper that had recommended a system of appeals against exclusion of aliens.

Now, the position in Singapore is quite different. Parliament has provided in our Immigration Act for appeals by aggrieved persons against the decisions of the Controller and of the Minister. The substance of these provisions is that the right to be heard, a procedural safeguard afforded by the rules of natural justice, has been given statutory recognition and protection in the Act. So far as the applicant is concerned, there is s 14(5) of the Act which I have set out above. The applicant who

was declared a prohibited immigrant and whose re-entry permit was cancelled by the Controller had a right of appeal to the Minister. And, the applicant had by letter availed herself of that right. The Minister had carefully considered her appeal and had rejected it. Neither in common law nor under the Act was the Minister required to give reasons for his decision.

Next, on the authorities, and subject to the foregoing, I am satisfied that the rules of natural justice do not apply to aliens in the administration of our immigration laws. For these rules to apply to aliens, there has to be specific legislation: for the present position in the United Kingdom, reference can be had to the provisions in the Immigration Act 1971; and, as regards the position in Australia, there is a statute of general application, the Administrative Decisions (Judicial Reviews) Act 1977. The long title of this Act states that it is 'An Act relating to the review on Questions of Law of certain Administrative Decisions'. In particular s 5 provides that any person who is aggrieved by a decision to which the Act applies, (it includes an alien facing an order of deportation) may apply to the court for an order of review on the grounds, inter alia, that a breach of the rules of natural justice occurred in connection with the making of that decision. Also, under s 13, an aggrieved person may, by notice in writing given to the decision-maker, request him to furnish the reasons for his decision. The onus is then on the decision-maker to give his grounds of decision. Needless to say, there is no such legislation in Singapore.

There remains for me to deal with two other topics which were referred to in the arguments at the hearings. The first relates to confidential information. It is said in the second affidavit for the Minister that he had considered information from a reliable source on the applicant's conduct and activities, and that he was of the view that the information, if disclosed, would endanger the confidentiality of the source and that would not be in the public interest. On this, the submission for the applicant was that, it having been conceded for the respondents that this is not a case of national security, the respondents are bound to adduce satisfactory evidence that disclosure would breach confidentiality and harm public interest. On the other hand, counsel for the respondents countered that even in the United Kingdom the law recognized that there are matters of state not involving national security which are confidential and may not be disclosed, if the disclosure will injure public interest. For the respondents, reliance was also had on ss 125 and 126 of the Evidence Act (Cap 97, 1985 Ed). All I need say on this subject is that, having regard to what is provided in s 8(3)(k) of the Act, that the Minister may receive information about an alien from 'any source deemed by the Minister to be reliable, or from any government through official or diplomatic channels', the sources of the information and the nature of the information received by the Minister can be of a highly confidential nature. Without the benefit of full argument on this provision, it seems to me that any information received by the Minister about an alien from any government through official or diplomatic channels, would be information which would not be in the public interest to disclose. And, as regards information received from any other source, as it is the Minister who is in possession of all the information, and Parliament has burdened him with the responsibility to decide on the reliability of the information, I take the view that it is for the Minister, and not the court, to decide whether it is in the public interest that the information should be disclosed. The Minister would, of course, be answerable to Parliament.

The other topic is the fallback argument for the applicant, to challenge the decisions of the Minister on the ground of irrationality. In the *GCHQ* case,[3] Lord Diplock said:

> By 'irrationality' I mean what can by now be succinctly referred to as 'Wednesbury unreasonableness' (*Associated Provincial Picture Houses Ltd* v *Wednesbury Corporation* [1948] 1 KB 223). It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it.

The learned Law Lord went on to say that 'irrationality' can now 'stand upon its own feet as an accepted ground on which a decision may be attacked by judicial review'. As to what is meant by 'Wednesbury unreasonableness', one must go back to 1948, to the judgment of Lord Greene MR in that case where he said:

> The court is entitled to investigate the action of the local authority with a view to seeing whether they have taken into account matters which they ought not to take into account, or, conversely, have refused to take into account or neglected to take into account matters which they ought to take into account. Once that question is answered in favour of the local authority, it may be still possible to say that although the local authority have kept within the four corners of the matters which they ought to consider, they have nevertheless come to a conclusion so unreasonable that no reasonable authority could ever have come to it. In such a case, again, I think the court can interfere. The power of the court to interfere in each case is not as an appellate authority to override a decision of the local authority, but as a judicial authority which is concerned, and concerned only, to see whether the local authority have contravened the law by acting in excess of the powers which Parliament has confided in them.

It was not clear to me when I heard Mr Blom-Cooper on this argument as to whether he was relying on the 'Wednesbury unreasonableness' or the 'GCHQ' irrationality. However, as that does not matter in this case, the submission was there was no basis upon which the Minister could properly have rejected the applicant's appeal. He put the applicant's case on two factual bases: (1) her assertion in her affidavit that throughout her stay in Singapore she had 'obeyed, followed and complied with

the laws of the Republic and has not contravened or conducted (herself) in a manner detrimental to the interests of the Republic' has not been controverted by the respondents; (2) as at that time, having been a permanent resident for more than five years, she was eligible for Singapore citizenship and had been invited to apply for it, it must be assumed that she had an unblemished record. Moreover, it was submitted, as the Minister had not furnished the court with the information to substantiate the decisions he made under s 8 (3)(k) of the Act, the court should infer that his decisions were irrational or unreasonable.

I reject this submission. Whatever the ground relied on may be, the burden is on the applicant to make out her case against the Minister. The fact that the applicant believed that she had been a law-abiding resident in Singapore does not prove that the Minister had done her wrong. She was not to know of the reliable information the Minister had against her. Equally, the fact that an officer in the Public Service Division of the Ministry of Finance and a clerical officer in the Registry of Citizens had sent routine letters to the applicant informing her that she was eligible to apply for Singapore citizenship was not proof that the applicant was a person of unblemished record. It was not the duty of those two officers to inquire into the character of the applicant or investigate into the conduct of the applicant's stay in Singapore. They were merely monitoring the length of stay of permanent residents in the country. For these reasons, I find as a fact that the two factual bases do not and cannot support the fallback argument for the applicant.

As for the respondents' case, I accept the evidence of the Deputy Secretary that when he submitted the applicant's appeal he sent all relevant documents to the Minister for his consideration. I accept the evidence for the Minister that he gave due and careful consideration to the appeal of the applicant before he rejected it. As was said, the fact that between 1982 and February 1987, a period of four years and nine months, though there were many tens of thousands of foreigners resident and working in Singapore, not more than a dozen aliens had been deemed by the Minister to be undesirable immigrants under s 8(3)(k) of the Act shows that the Minister exercises his powers under this provision most carefully and very sparingly. Since the Minister, responsible to Parliament, had given the applicant's case his personal consideration, and there was no evidence to show that he had acted unfairly, the application for an order of certiorari to quash the decisions of the Minister and the Controller must be dismissed with costs.

Order accordingly.

Solicitors: *Dube & Co.*

Reported by *Wong Kim Fatt*

Re Solid H Gold Engineering Works, ex parte the Official Assignee

HIGH COURT (SINGAPORE) – IN BANKRUPTCY NO 66 OF 1987
CHAN SEK KEONG J
9 SEPTEMBER 1988

Bankruptcy – Receiving order made against firm – Adjudication order made against persons as partners of firm – Change in partners – One of the partners not a partner when judgment debt was incurred – Defects in proceedings – Orders rescinded and annulled – Bankruptcy Rules 1967, rr 104, 238 & 240 – Subordinate Courts Rules 1969, O 69 r 5(3) – Bankruptcy Act (Cap 20, 1985 Ed), ss 3 & 133

In this case bankruptcy proceedings were founded upon a judgment for $19,000 obtained against the firm for goods sold and delivered when Ong Hock Choon, Ong Ah Seng and Kwek Meme were partners of the firm. The writ was issued against the firm as defendant and served by substituted service by posting a copy on the front door of the place of business of the firm. At the date of the writ the said Kwek Meme had retired as a partner. Ong Hock Choon had also retired from the partnership on 27 June 1986 and thus when the bankruptcy notice was issued on 7 January 1987 against the firm, the firm was a sole proprietorship. The bankruptcy notice was intended to be issued against the firm, in which Ong Hock Choon and Ong Ah Seng were partners. The bankruptcy notice was served on Ong Ah Seng as a partner; at that time he was the sole proprietor. The bankruptcy petition was served on 11 June 1987 and by this time the firm had become a partnership again with the entry of Lim Eng Lan as partner on 7 April 1987. However, the statement filed pursuant to r 104 of the Bankruptcy Rules wrongly named Ong Hock Choon and Ong Ah Seng as partners. Receiving orders were made against the firm and adjudication orders were made against Ong Hock Choon and Ong Ah Seng as partners thereof. The Official Assignee contended that both the said orders were bad and ought to be rescinded. It was contended (a) that the combined effect of rr 238 and 240 of the Bankruptcy Rules 1967 was that a person who was not a partner at the date of the receiving order could not be adjudicated a bankrupt as the receiving order made against the firm did not operate against him. Therefore the adjudication order made against Ong Hock Choon was invalid; (b) under r 238 of the Bankruptcy Rules, the receiving order operated against Lim Eng Lan at the date of the order. As Lim Eng Lan could never be made bankrupt on a judgment debt for which she was not liable the receiving order must be bad; (c) the judgment debt was not one on which execution had not been stayed as required by s 3(1)(i) of the Bankruptcy Act.

Held, allowing the application of the Official Assignee:

(1) There were a number of defects in the proceedings and no amendment could be made to the bankruptcy notice and the petition in order to validate the receiving order or the adjudication orders. The judgment debt was not one on which execution had not been stayed and no amendment to the notice or the petition can cure this defect.

(2) The application of the Official Assignee is allowed and the receiving order and adjudication order made are rescinded and annulled.

Cases referred to

1 *Re Ide* (1886) 17 QBD 755 (refd)
2 *Re Wenham* [1900] 2 QB 698 (distd)